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Fish and Game Commission



Sonke Mastrup, Executive Director
1416 Ninth Street, Room 1320
Sacramento, CA 95814
(916) 653-4899
(916) 653-5040 Fax
www.fgc.ca.gov

October 29, 2014

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Findings regarding the gray wolf which will be published in the California Regulatory Notice Register on October 31, 2014.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Tiemann".

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

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CALIFORNIA FISH AND GAME COMMISSION NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission (Commission), on October 8, 2014, received a petition from the Center for Biological Diversity to take emergency action to list the Tricolored blackbird (*Agelaius tricolor*) as endangered under the California Endangered Species Act.

The Tricolored blackbird was historically distributed throughout most of the Central Valley, adjacent foothills, coastal ranges and southern California. Habitat types required by this species include riparian, marsh, and agricultural fields. Tricolored blackbirds are medium-sized, nesting in dense colonies.

Pursuant to Section 2073 of the Fish and Game Code, the Commission has forwarded the petition to the California Department of Fish and Wildlife for its review and recommendation. The Commission will consider taking emergency action to list the Tricolored blackbird as an endangered species at its December 3, 2014, meeting in Van Nuys.

Interested parties may contact Ms. Helen Birss, Habitat Conservation Planning Branch Chief, California Department of Fish and Wildlife, 1416 Ninth Street, Suite 1260, Sacramento, CA 95814, or telephone 916.653.9834, for information on the petition or to submit information to the Department relating to the petitioned species.

October 15, 2014

Fish and Game Commission

Sonke Mastrup
Executive Director

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October 29, 2014

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Receipt of Petition which will be published in the California Regulatory Notice Register on October 31, 2014.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Tiemann".

Sheri Tiemann
Associate Governmental Program Analyst

Attachment

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CALIFORNIA FISH AND GAME COMMISSION
NOTICE OF FINDINGS AND NOTICE OF PROPOSED RULEMAKING
Gray Wolf
(*Canis lupus*)

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at its June 4, 2014 meeting in Fortuna, California, made a finding pursuant to California Fish and Game Code section 2075.5(e), that the petitioned action to add the gray wolf (*Canis lupus*) to the list of endangered species under the California Endangered Species Act, Fish & G. Code, § 2050 *et seq.* (CESA) is warranted.¹ See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).

NOTICE IS ALSO GIVEN that the Commission, consistent with Fish and Game Code section 2075.5, proposes to amend Title 14, section 670.5, of the California Code of Regulations, to add the California gray wolf to the list of species designated as endangered under CESA. See also *id.*, tit. 14, 670.1, subd. (j).

I. BACKGROUND AND PROCEDURAL HISTORY

On February 27, 2012, the Center for Biological Diversity (Center), Big Wildlife, the Environmental Protection Information Center, and Klamath-Siskiyou Wildlands Center petitioned (Petition) the Commission to list the gray wolf as an endangered species under CESA. Cal. Reg. Notice Register 2012, No. 15-Z, p. 494. The Commission received the Petition on March 12, 2012, and referred it to the Department of Fish and Wildlife (Department) for an initial evaluation on March 13, 2012. Cal. Reg. Notice Register 2012, No. 15-Z, p. 494. On June 20, 2012, the Commission granted a request by the Department for an additional thirty (30) days to complete its initial evaluation of the Petition.

On August 1, 2012, the Department submitted its Initial Evaluation of the Petition to List the Gray Wolf (*Canis lupus*) under the California Endangered Species Act (CESA) (August 1, 2012) (hereafter, the 2012 Candidacy Evaluation Report), recommending that the Petition provided sufficient information such that listing may be warranted and, therefore, that the Commission accept the Petition for further evaluation under CESA. Fish & G. Code, § 2073.5, subd. (a)(2); Cal. Code Regs., tit. 14, § 670.1, subd. (d).

On October 3, 2012, the Commission voted to accept the Petition for further evaluation and to initiate a review of the status of the species in California pursuant to Fish and Game Code section 2074.2, subdivision (e)(2). Upon publication of the Commission's notice of determination, the gray wolf was designated a candidate species on November 2, 2012. Cal. Reg. Notice Register 2012, No. 44-Z, p. 1610 (2012 Candidacy Evaluation Report).

Consistent with the Fish and Game Code and controlling regulation, the Department commenced a 12-month status review of the gray wolf following published notice of its designation as a candidate species under CESA. As part of that effort, the Department solicited data, comments, and other information from interested members of the public and the scientific and academic community; and the Department submitted a preliminary draft of its status review for independent peer review by a number of independent reviewers who possess the knowledge and expertise to critique the validity of the report. Fish & G. Code, §§ 2074.4, 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).

¹ The definition of an "endangered species" for purposes of CESA is found in Fish and Game Code section 2062.

The effort culminated with the Department's final Status Review of the gray wolf (*Canis lupus*) (February 5, 2014) (Status Review), which the Department submitted to the Commission at its meeting in Sacramento, California, on February 5, 2014. The Department recommended to the Commission that designating gray wolf as an endangered species under CESA is not warranted. Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).

The Commission considered the Petition, the Department's 2012 Candidacy Evaluation Report, the Department's Status Review, and other information included in the Commission's administrative record of proceedings at its meeting in Ventura, California on April 16, 2014, and at its meeting in Fortuna, California on June 4, 2014. Fish & G. Code, § 2075; Cal. Code Regs., tit. 14, § 670.1, subds. (g) and (i). After receiving additional information and oral testimony, the Commission determined, based on the requirements of CESA and the evidence before it, that listing gray wolf as an endangered species under CESA is warranted. Fish & G. Code, § 2075.5(a); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A). In so doing, the Commission directed its staff to prepare findings of fact consistent with its determination for consideration and ratification by the Commission at a future meeting. The Commission also directed its staff, in coordination with the Department, to begin formal rulemaking under the California Government Code to add the gray wolf to the list of endangered species set forth in Title 14, section 670.5, of the California Code of Regulations. Fish & G. Code, § 2075.5(e)(2); Cal. Code Regs., tit. 14, § 670.1, subd. (j); Gov. Code, § 11340 *et seq.*

II. STATUTORY AND LEGAL FRAMEWORK

The Commission has prepared these findings as part of its final action under CESA to designate the gray wolf as an endangered species. As set forth above, the Commission's determination that listing the gray wolf is warranted marks the end of formal administrative proceedings under CESA prescribed by the Fish and Game Code and controlling regulation. See *generally* Fish & G. Code, § 2070 *et seq.*; Cal. Code Regs., tit. 14, § 670.1. The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered and threatened species under CESA. Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.²

As set forth above, the CESA listing process for gray wolf began in the present case with the Center's submittal of its Petition to the Commission in March 2012. Cal. Reg. Notice Register 2012, No. 15–Z, p. 494. The regulatory process that ensued is described above in some detail, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

Mountain Lion Foundation v. California Fish and Game Commission, 16 Cal.4th 105, 114–116 (1997);

California Forestry Association v. California Fish and Game Commission, 156 Cal.App.4th 1535, 1541–1542 (2007);

² Pursuant to this authority, standards, and procedures, the Commission may add, remove, uplist or downlist any plant or animal species to the list of endangered or threatened species, or to notice that any such species is a candidate for related action under CESA upon acceptance of a listing petition. Fish & G. Code, § 2074.2(a)(2); see also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A)–(C). In practical terms, any of these actions may be commonly referred to as subject to CESA's "listing" process.

Center for Biological Diversity v. California Fish and Game Commission, 166 Cal.App.4th 597, 600 (2008); and

Natural Resources Defense Council v. California Fish and Game Commission, 28 Cal.App.4th 1104, 1111–1116 (1994).

The “is warranted” determination at issue here for the gray wolf is established by Fish and Game Code section 2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here, with respect to gray wolf, the Commission made the finding under section 2075.5(2) that the petitioned action is warranted.

The Commission is guided in making this determination by the Fish and Game Code, CESA, other controlling law, and factual findings. The Fish and Game Code, for example, defines an endangered species under CESA as a “a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.” Fish & G. Code, § 2062. As established by published appellate case law in California, the term “range” for purposes of CESA means the range of the species within California. *California Forestry Ass’n v. California Fish and Game Comm’n*, *supra*, 156 Cal.App.4th at 1540, 1549-1551. The Fish and Game Code, CESA, and other controlling law do not require a species to have a continuous presence or a breeding population in California in order to meet the definition of “endangered” or “threatened.”

The Commission is also guided in making its determination regarding gray wolf by Title 14, section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species’ continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Likewise, the Commission is guided in its determination regarding the gray wolf by Fish and Game Code section 2070. This section provides that the Commission shall add or remove species from the list it establishes under CESA upon receipt of sufficient information that the action is warranted. As the Commission’s findings reflect, the gray wolf’s continued existence in California is in serious danger due to multiple threats.

Furthermore, CESA provides policy direction indicating that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the purposes of CESA. Fish & G. Code, § 2055. This policy direction does not compel a particular determination by the Commission in the CESA listing context. Yet, the Commission made its determination regarding gray wolf mindful of this

policy direction, acknowledging that "[l]aws providing for the conservation of natural resources' such as the CESA 'are of great remedial and public importance and thus should be construed liberally.'" *California Forestry Ass'n v. California Fish and Game Comm'n*, *supra*, 156 Cal.App.4th at 1545-1546 (citing *San Bernardino Valley Audubon Society v. City of Moreno Valley*, 44 Cal.App.4th 593, 601 (1996); Fish & G. Code, §§ 2051 and 2052).

Finally, in considering these factors, CESA and controlling regulation require the Commission to actively seek and consider related input from the public and any interested party. See, e.g., *id.* §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h). The related notice requirements and public hearing opportunities before the Commission are also considerable. Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5 and 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g) and (i); see also Gov. Code, § 11120 *et seq.* All of these requirements are in addition to those proscribed for the Department in the CESA listing process, including an initial evaluation of the Petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to whether listing is warranted. Fish & G. Code, §§ 2073.4, 2073.5, 2074.4 and 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f) and (h).

III. FACTUAL BASES FOR THE COMMISSION'S FINDING

CESA provides for the listing of either "native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant." Fish and G. Code, §§ 2062 and 2067. The Petition, and the Commission's finding, applies to the gray wolf in California.

The factual bases for the Commission's finding that listing gray wolf as an endangered species under CESA is warranted are set forth in detail in the Commission's administrative record of proceedings. Substantial evidence in the administrative record of proceedings in support of the Commission's determination includes, but is not limited to, the Petition, the Department's 2012 Candidacy Evaluation Report, the Department's 2014 Status Review, and other information presented to the Commission and otherwise included in the Commission's administrative record of proceedings as it existed up to and including the meeting in Fortuna, California on June 4, 2014. The Commission made its final determination under CESA with respect to gray wolf at that meeting. Fish & G. Code, § 2075; Cal. Code Regs., tit. 14, § 670.1, subds. (g) and (i).

The Commission finds the substantial evidence supports the Commission's determination under CESA that the continued existence of gray wolf in the State of California is endangered by one or a combination of the following factors:

1. Overexploitation;
2. Predation;
3. Disease;
4. Other natural occurrences or human-related activities.

The Commission also finds that there is in the record of administrative proceedings substantial evidence to establish that designating the gray wolf as an endangered species under CESA is warranted. The following Commission findings highlight in more detail some but not all of the evidence in the administrative record of proceedings that support the Commission's determination that the gray wolf is in serious danger of becoming extinct throughout all, or a significant portion, of its range:

1. It is likely that wolves historically occurred in California and were widely distributed in the State. Status Review at 10 (“While limited the available information suggests that wolves were distributed widely in California, particularly in the Klamath-Cascade Mountains, North Coast Range, Modoc Plateau, Sierra Nevada, Sacramento Valley, and San Francisco Bay Area. The genetic evidence from southeastern California suggests that the Mexican wolf may have occurred in California, at least as dispersing individuals. While the majority of historical records are not verifiable, for the purposes of this status review, the Department concludes that the gray wolf likely occurred in much of the areas depicted (CDFW 2011a) (Figure 1)); 2012 Candidacy Evaluation Report at 4 (“As to the science available at this time and the reasonable inferences that can be drawn from that information, it indicates to the Department at this time that wolves were likely broadly distributed in California historically”); *id.* at 10 (“In summary, historic anecdotal observations are most consistent with a hypothesis that wolves were not abundant, but widely distributed in California.”).
2. There is sufficient evidence to conclude that wolves occurred historically in California. However, by the late 1920’s, the species was extirpated from the state. Status Review at 4 (“2012 Candidacy Evaluation Report at 4) (“As to the science available at this time and the reasonable inferences that can be drawn from that information ... humans likely purposefully extirpated the species in California early in the twentieth century.”)
3. Following listing of the gray wolf under the federal Endangered Species Act in 1974 and recovery efforts during the 1990s, a population of gray wolves in the Northern Rocky Mountain states has been re-established through a federal recovery program, and dispersing wolves from this population have established territories and several packs in Washington and Oregon. 2014 Status Review at 28.
4. In September 2011, a radio-collared, sub-adult gray wolf known as “OR7” dispersed from the Imnaha pack in northeastern Oregon and arrived in California on December 28, 2011, marking the first documented individual of the species in California since the 1920s. 2012 Candidacy Evaluation Report at 4 (“a single lone wolf, a dispersing young male named ‘OR7,’ entered California in December 2011, remaining largely in the State since that time”); *id.* at 10 (“The first gray wolf detected in California after many decades occurred in December 2011 with the arrival of ‘OR7,’ a radio-collared, sub-adult gray wolf that dispersed from a pack in Oregon.”); *id.* (“OR7 dispersed from the Northeastern Oregon’s Imnaha pack in September 2011.”)
5. The gray wolf is once again present in California, on at least an intermittent basis, and foreseeably will continue to be present in California, as discussed below. OR-7’s range now includes California and Oregon. OR7 has established a range that includes portions of Northern California, as this wolf is known to have crossed back and forth across the Oregon-California border since 2011 and to have been present in California in each of those years. Status Review at 4 (“The lone radio-collared gray wolf, OR7, dispersed from northeastern Oregon’s wolf population to California in December 2011 and has been near the Oregon/California border since that time, crossing back and forth.”); *id.* at 18 (“As far as the Department is aware, there is one gray wolf (OR7) that is near the Oregon/California border such that it may be in either state at any time.”); 2012 Candidacy Evaluation Report at 11 (“OR7 has passed back and forth over the

California/Oregon border several times over the last five months ... "); California Department of Fish and Wildlife, Gray Wolf OR7: Updates on wolves migrating to California (available at <http://californiagraywolf.wordpress.com>); see also Oregon Department of Fish and Wildlife, OR-7 Timeline of Events (available at <http://www.dfw.state.or.us/wolves/OR-7.asp>) (documenting OR7's presence in California in each of 2011, 2012, 2013, and 2014).

6. OR7 has utilized areas of suitable habitat, primarily on public lands, comprised of ponderosa pine forests, mixed conifer forests, lava flows, sagebrush shrublands, juniper woodlands, as well as private lands including timberlands and agricultural lands, and has exhibited normal dispersal behavior for a young male gray wolf as he has sought to find other wolves, to establish his own pack, or to become part of an established wolf pack. 2012 Candidacy Evaluation Report at 10 ("It is believed that OR7 is exhibiting normal dispersal behavior for young male wolves, seeking to find other wolves, to establish his own pack, and/or to become part of an established wolf pack."); *id.* at 11 ("OR7 has passed through ponderosa pine forests, mixed conifer forests, lava flows, sagebrush shrublands, juniper woodlands, and agricultural lands"); *id.* ("Although OR7 has used private lands (timberlands in particular), most of its route has traversed public lands.").
7. On June 4, 2014, the State of Oregon Department of Fish and Wildlife confirmed that OR7 had mated with a female wolf of unknown origin, and that the pair was denning with a litter of at least two pups on public land in southwestern Oregon. See Press Release, Oregon Department of Fish and Wildlife, Pups for wolf OR7 (June 4, 2014) ("Wolf OR7 and a mate have produced offspring in southwest Oregon's Cascade Mountains, wildlife biologists confirmed this week."); Comments of Pamela Flick, Defenders of Wildlife (June 4, 2014 Commission hearing) (reporting breaking news that a remote camera in southwestern Oregon has detected at least two pups).
8. As the gestation period for gray wolves is 62-63 days and OR7 was documented in northern California on February 5, 2014, it is likely that OR7's mate was traveling with OR7 in California at the time. Status Review at 10 ("The gestation period for wolves is 62-63 days."); Testimony of Amaroq Weiss, June 4, 2014 Commission Meeting (Powerpoint slides at 15) ("A breeding population is likely on the border right now and a pregnant female was likely present in California already this year."); L.D. Mech & L. Boitani, editors. *Wolves: behavior, ecology, and conservation*. University of Chicago Press, Chicago, Illinois, USA (cited in 2012 Candidacy Evaluation Report and Status Review) (discussing in Chapter 2 the reproductive behavior of wolves, and how wolves spend many months together leading up to impregnation and gestation).
9. The evidence in the record regarding wolf migration and dispersal behavior at a minimum indicates that wolves other than OR7 have similarly dispersed or will disperse to California, as most wolves from Oregon packs are not collared with radio transmitters and their presence in California may not otherwise have been detected ("we have acknowledged that we know of one [wolf, OR7]" and that "there could be others that we don't know about"); U.S. Fish and Wildlife Service, Montana Fish, Wildlife & Parks, Nez Perce Tribe, National Park Service, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Wind River Tribes, Washington Department

of Wildlife, Oregon Department of Wildlife, Utah Department of Wildlife Resources, and USDA Wildlife Services. 2011. Rocky Mountain Wolf Recovery 2010 Interagency Annual Report. C.A. Sime and E. E. Bangs, eds. USFWS, Ecological Services, 585 Shepard Way, Helena, Montana. 59601. (2011) at 2 (noting that “it is difficult to locate lone dispersing wolves.”); Carroll (2013) (Peer Review) at 5-6 (“[n]ot all Oregon wolves are detected and collared” so “it is possible that not all wolves dispersing to California have been detected”). Petition at 15 (“... it is impossible to rule out the possibility that previous dispersal events to California may ... have occurred, which simply went undetected because it is difficult to locate and track dispersing individual wolves”); Comments of Eric Loft (April 16, 2014 Commission Hearing).

10. The presence of wolves in California is small and is likely to remain small for the foreseeable future. Eisenberg (2013) (Peer Review) at 2 (“Any wolves becoming established in California will initially constitute a small population.”).
11. Dispersing wolves and small wolf populations are inherently at risk due to demographic and environmental stochasticity and in the case of wolves, of being killed by poachers, or hunters that mistake them for coyotes. Status Review at 5 (“A small population in California would be at some inherent risk although the species has demonstrated high potential to increase in other states. Dispersing individuals and small packs would likely be at highest risk due to population size.”); *id.* at 19 (“It is possible that a coyote hunter could mistake a gray wolf for a coyote, particularly at a long distance.”); *id.* at 22 (“With at least one gray wolf near the border of Oregon/California, and the knowledge that populations or species ranges are typically so large that they could range across both states ..., an individual wolf, or a small number of wolves would be threatened in their ability to reproduce depending on the number and sex of the animals present in the range.”); 2012 Candidacy Evaluation Report at 6 (“Wolves are often confused with coyotes (*Canis latrans*) and domestic dogs (*C. lupus familiaris*), and wolf hybrids, which result from the mating of a wolf and a domestic dog.”).
12. Despite losses of areas of the gray wolf’s historic range in California, large tracts of habitat remain in the State that are sufficient to support a wolf population, particularly in the Modoc Plateau, Sierra Nevada, and Northern Coastal Mountains. Status Review at 17 (“Habitat Suitability Modeling: There are studies that have modeled potential suitable wolf habitat in California. Carroll (2001) modeled potential wolf occupancy in California using estimates of prey density, prey accessibility and security from human disturbance (road and human population density). Results suggested that areas located in the Modoc Plateau, Sierra Nevada, and the Northern Coastal Mountains could be potentially suitable habitat areas for wolves.”).
13. Since entering California, there have been threats to harm or kill OR7 or other wolves found in the State. (See e.g. May 6, 2013 Center for Biological Diversity letter to Department of Fish and Wildlife, p.13.) Although many people are supportive of gray wolves as a component of wildland ecosystems, wolves are considered a threat to livestock and wild ungulates by many other people, and are considered a threat to people by some. For example, the administrative record includes reports of statements by county supervisors from Modoc, Siskiyou, and Lassen counties expressing a desire to kill wolves in the area, a sentiment which represents an

imminent threat to wolves that are dispersing to the State. Status Review at 4-5 ("It is believed that limiting human-caused mortality through federal protection has been one of the key reasons that recovery efforts in the northern rocky mountains were successful."); *id.* at 18-19 ("Public perception of wolf attacks on people, the documented losses of livestock, and the sometimes photographed killing of livestock or big game, continues to influence human attitudes toward wolves."); Lassen County Board of Supervisors Hearing (Feb. 21, 2012) (quoting Lassen County supervisor to CDFW spokesperson) ("If I see an animal in my livestock, I kill it. If I kill a wolf, you going to throw me in jail? I don't care what it is.") (from notes taken at board meeting by Amaroq Weiss, Center for Biological Diversity); Modoc County Board of Supervisors Meeting (quoting Modoc County Supervisor) ("If I see a wolf, it's dead.") (Modoc County Board of Supervisors January 24, 2012 Hearing, Audio Archive); Chair of the Siskiyou County Board of Supervisors ("People are pretty much at their wits' end trying to make a living with all the environmental protections that are being foisted upon them" and "we would like to see [wolves] shot on sight") (*Los Angeles Times* (Dec. 24, 2011)) (available at <http://articles.latimes.com/2011/dec/24/local/la-me-wolf-oregon-20111225>). The Commission considers these statements and others like them to be compelling evidence of a threat to the continued existence of gray wolf in California. In a small early population of the species, loss of even one individual from human causes could significantly impact the ability of the species to thrive for years to come. CESA would criminalize such behavior in a more significant way than currently exists and act as a deterrent that may assist in allowing the early members of California's gray wolf population to persist.

14. Humans are the primary factor in the past decline of wolves in the conterminous United States, including California, and humans remain the largest cause of wolf mortality as a whole in the western United States. Humans impact wolf populations through intentional predation (shooting or trapping) for sport or for protection; through unintentional killing, as gray wolves are often confused with coyotes (*Canis latrans*), domestic dogs (*C. lupus familiaris*), and wolf hybrids; through vehicle collisions; and through exposures to diseases from domestic animals. For example, the administrative record demonstrates that on more than one occasion, staff from the California Department of Fish and Wildlife have been fearful that OR7 and other unknown wolves that could be in California would be mistaken for a coyote and shot or harmed. Limiting human-caused mortality through federal protection has been one of the key reasons that the recovery effort in the Northern Rocky Mountains has been successful. Status Review at 4-5 ("It is believed that limiting human-caused mortality through federal protection has been one of the key reasons that recovery efforts in the northern rocky mountains were successful."); *id.* at 19 ("Human-caused mortality of wolves is the primary factor that can significantly affect wolf populations (USFWS 2000, Mitchell et al. 2008, Murray et al. 2010, Smith et al. 2010)"); *id.* at 20.
15. Gray wolves are susceptible to several diseases including canine parvovirus and canine distemper, which has been responsible for extremely high rates of wolf pup mortality and suppression of wolf populations and which can be contracted from domestic dogs. Wolves are also susceptible to mange; mange-associated wolf population declines in Yellowstone National Park have led to pack extinction. Status Review at 23 (Wolves are vulnerable to a number of diseases and parasites, including, mange, mites, ticks, fleas, roundworm, tape worm, flatworm, distemper,

parvovirus, cataracts, arthritis, cancer, rickets, pneumonia, and Lyme disease.”); *id.* (“The transmission of disease from domestic dogs, e.g. parvovirus, is a grave conservation concern for recovering wolf populations (Paquet and Carbyn 2003; Smith and Almberg 2007). Recently, two wolves and two pups in Oregon were found to have died from parvovirus (ODFW 2013b). The disease is not thought to significantly impact large wolf populations, but it may hinder the recovery of small populations (Mech and Goyal 1993).”); *id.* (“Canine distemper and canine infectious hepatitis: Both diseases are known to occur in wolves and more recently canine parvovirus has become prevalent in several wolf populations (Brand et al. 1995)”; E.S. Almberg, P.C. Cross, A.P. Dobson, D.W. Smith and P.J. Hudson. 2012. Parasite invasion following host reintroduction: a case study of Yellowstone’s wolves. *Philosophical Transactions of the Royal Society Bulletin*. 367, p. 2840-2851).”).

16. Listing the gray wolf under CESA will allow the species to benefit from CESA’s protections, and would further the intent of the Legislature and be consistent with the objectives of CESA, *i.e.*, the conservation, protection, restoration, and enhancement of species in their range in California. Protecting the gray wolf under CESA will also strengthen the Department’s existing stakeholder process to develop a state wolf plan, by providing clarity as to the management tools and options that will be available to the Department and to stakeholders. Status Review at 33 (“If the gray wolf species is listed under CESA, it may increase the likelihood that State and Federal land and resource management agencies will allocate funds towards protection and recovery actions.”); Carroll (2013) (Peer Review) at 6 (“Rather than using a dubious interpretation of CESA to decline to list a species due to its temporary and uncertain absence from state, California should follow the example of Washington and Oregon in using the relevant state statutes to protect colonizing wolves while at the same time developing multi-stakeholder plans that proactively restore wolf conservation and management issues.”).

IV. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated the evidence presented for and against designating gray wolf as an endangered species under CESA. This information includes the Petition; the Department’s Petition Evaluation Report; the Department’s status review; the Department’s related recommendations; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission’s record of proceedings. Based upon the evidence in the record the Commission has determined that the best information available indicates that the continued existence of the one or more gray wolves in California is in serious danger of extinction or threatened by present or threatened overexploitation, predation, disease, or other natural occurrences or human-related activities, where such factors are considered individually or in combination. (See generally Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A); Fish & G. Code, §§ 2062, 2067.) The Commission determines that there is sufficient evidence in the record to indicate that designating the gray wolf as an endangered species under CESA is warranted at this time and, with the adoption and publication of these findings and further proceedings under the California Administrative Procedure Act, the gray wolf shall be listed as endangered. See Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).